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1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 WESTERN DISTRICT OF PENNSYLVANIA
3 CONSOLIDATION COAL COMPANY,)
4 Plaintiff,)
5 vs.)
6 UNITED STATES DEPARTMENT OF)
7 THE INTERIOR, NATIONAL PARK) Civil Action
8 SERVICE,) No. 00-2120
9 and)
10 CAROL D. SCHULL, individually)
11 and in her capacity as the)
12 Keeper of the National Register)
13 of Historic Places,)
14 and)
15 ROY BRENDEL and DIANE BRENDEL,)
16 Defendants.)

14

15

16

DEPOSITION OF: ROY BRENDEL

17

18

19

DATE: February 9, 2006
Thursday, 9:30 a.m.

20

21

LOCATION: Thorp Reed & Armstrong
14th Floor
One Oxford Centre
Pittsburgh, PA 15219

22

23

TAKEN BY: Consolidation Coal Company

24

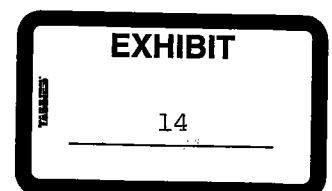
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REPORTED BY: Keith G. Shreckengast, RPR
Notary Public
AKF Reference No. KS92308

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1 DEPOSITION OF ROY BRENDEL,
2 a witness, called by the Plaintiff for examination,
3 in accordance with the Federal Rules of Civil
Procedure, taken by and before Keith G. Shreckengast,
RPR, a Court Reporter and Notary Public in and for
the Commonwealth of Pennsylvania, at the offices of
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9 about that.
10 Q. Do you understand that? Is that your
11 understanding?
12 A. Is what my understanding?
13 Q. That if this order is complied with fully, you
14 will receive no money from Consol in connection
15 with damage to the property?
16 A. I don't know that.
17 Q. You have not discussed that with anybody?
18 A. No.
19 Q. Now do you have any documents to show us
20 visually the extent of damage to your property?
21 A. I brought you all the documents that you
22 requested.
23 Q. Are they here today?
24 A. They're in the car.
25 Q. You have pictures or something?

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1 A. Yes, the same pictures, the pictures and tapes
2 that were here yesterday.
3 Q. I understand that. Do you have them so you can
4 go over them with me?
5 A. We have to go get them. They're in Mr. Hook's
6 car. Should we go get them?
7 MR. HOOK: We're not going to get
8 them, Mr. Katarincic. I explained to you
9 yesterday, given the way you tried to handle
10 them yesterday, until we agree on a method for
11 addressing those documents, they're not going
12 to be brought into this office again. They're

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- 13 available for you to review at any time at my
14 office.
- 15 Q. Let me ask you, what evidence do you have to
16 show visually the damage to this property?
17 Describe it in detail for me.
- 18 A. I complied with everything that you asked for.
- 19 Q. I'm asking you what documents do you have,
20 pictures, anything?
- 21 A. It's all in that, in those boxes.
- 22 Q. Sir, please tell me, what do you have in
23 writing, pictures?
- 24 A. I can't remember all them.
- 25 Q. Give me a general description of them.

□

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- 1 A. The items that you requested, they're in the
2 boxes.
- 3 Q. But I mean as to reflecting the damage, what do
4 you have in those boxes?
- 5 A. Just what you asked for.
- 6 Q. And what is that, as you understand it?
- 7 A. The documents that are in the boxes.
- 8 Q. what documents are there in the boxes that
9 reflect the damage that the structures have
10 incurred as a result of mining?
- 11 MR. HOOK: Are you asking him to
12 describe in general?
- 13 MR. KATARINCIC: Just general, that's
14 what I said to him.
- 15 MR. HOOK: Pictures, videotapes, et
16 cetera?
- 17 MR. KATARINCIC: Obviously, that's

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18 what I said to him.

19 BY MR. KATARINCIC:

20 Q. General description of what you have. Now that
21 he's made his observations, I think you'll have
22 an answer, but go ahead.

23 A. I brought up the boxes, the boxes of tapes and
24 the boxes of pictures, and the boxes of
25 documents that you asked for.

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1 Q. Where are they? They're in the car?

2 MR. HOOK: He explained they're in my
3 car. They'll be made available to you at my
4 office.

5 MR. KATARINCIC: Your case is in
6 Pittsburgh.

7 BY MR. KATARINCIC:

8 Q. Let me ask you, what are they, just generally
9 tell me. What are these documents that support
10 and reflect the damage incurred to the
11 structures?

12 A. They're in the boxes.

13 Q. In the boxes. Are they pictures, photographs?

14 A. There are pictures.

15 Q. There are photographs. Do you have any idea of
16 approximately how many? 100? You don't need
17 to be precise, just a rough number.

18 A. There's got to be over 100.

19 Q. Do some of those pictures show the condition of
20 the property before the mining took place?

21 A. Yes.

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22 Q. And how many of those, roughly, pictures would
23 you have?
24 A. I can't remember exactly how many.
25 Q. You have pictures showing the condition of the

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1 property following the completion of the
2 mining?
3 A. They're all in the boxes.
4 Q. But you do have such pictures?
5 A. I have all the pictures that you asked me to
6 bring are there.
7 Q. But I'm asking do you have, whether they're
8 here or not here, do you have in your
9 possession or control photographs showing the
10 damage after the mining was completed?
11 A. I brought the boxes here yesterday.
12 Q. Is your answer yes to my question?
13 A. My answer is I brought the boxes here
14 yesterday.
15 Q. I understand that, but do you have --
16 MR. HOOK: He's answered it.
17 MR. KATARINCIC: He hasn't answered.
18 He's just repeating what he was told to say.
19 BY MR. KATARINCIC:
20 Q. You're under oath, you have to tell me, do you
21 have photographs anywhere?
22 A. I complied and brought the things that you
23 asked for in the boxes.
24 Q. That's fine, but do you have any photographs,
25 tell me yes or no, showing the condition after

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- 1 the mining?
- 2 A. I have all the photographs that you asked for
- 3 in that box.
- 4 Q. And are there photographs showing the condition
- 5 of the structures after the mining?
- 6 A. You can see the photographs yourself when you
- 7 open the box.
- 8 Q. And there are videotapes you said, your lawyer
- 9 said?
- 10 A. There are tapes.
- 11 Q. And do they reflect the damage to the
- 12 structure?
- 13 A. Those tapes were taken the whole time, since
- 14 the beginning of the mining.
- 15 Q. But do they reflect damage to the structures?
- 16 A. Yes, some of them.
- 17 Q. How many of those tapes do you have that
- 18 reflect damage, half a dozen, a dozen?
- 19 A. I'd say about 20.
- 20 Q. And that would be videotapes showing the
- 21 structure both before and after the damage, or
- 22 just after the damage to the structures?
- 23 A. There were pre-mining videos taken.
- 24 Q. They're included in the videos you have?
- 25 A. I think I included all the tapes.

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- 1 Q. So there were the tapes that you have, if they
- 2 include pre-mining conditions, you would have
- 3 taken them?

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4 A. Yes.

5 Q. Are there any writings that you have here that
6 reflect the extent of the damage?

7 A. I have just the stuff that's in the boxes.

8 Q. Just in the boxes?

9 A. That's it, all the documents you requested that
10 I had, I put in the boxes.

11 Q. We yesterday identified with Mrs. Brendel
12 Exhibits 1 and 1A, the notices that were served
13 on her. These are identical to those served on
14 you. Would you look at those and tell me --
15 those items listed on Exhibit A, what's in the
16 boxes that are not here today?

17 A. I packed those boxes. I can't remember every
18 little thing that's in there. I complied with
19 what you asked. I put all the documents that I
20 had in the boxes.

21 Q. Would you go to the exhibit, please. Go to
22 paragraph 1. As an example, we asked you in
23 paragraph 1 any documents which support your
24 claim in paragraph 8 in the Second Amended
25 Answer, Counterclaim and so forth.

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1 A. That's all lawyer stuff.

2 Q. Did you go over in determining what documents
3 exist?

4 MR. HOOK: You can't ask him what he
5 did with his attorneys.

6 Q. I don't care what you did with your attorney.
7 All I want to know, when you got this notice,
8 did you search around your house or office or

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9 wherever to see what you had within these
10 categories of Exhibit A?
11 A. My lawyer has taken care of all of those type
12 things. I've got enough to deal with.
13 Q. Did you or did you not is all I'm asking? If
14 your answer is no, tell me. If your answer is
15 yes, tell me. Did you search for these
16 documents?
17 A. My answer is my lawyer is handling all that.
18 Q. Did you furnish any documents to your lawyer in
19 response to Exhibit A?
20 MR. HOOK: He's already answered that
21 he provided all of his documents in the boxes
22 that were brought up here. That's the answer
23 to all these questions.
24 MR. KATARINCIC: I have a right to
25 ask these questions.

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1 BY MR. KATARINCIC:
2 Q. Did you search for the documents in Exhibit A?
3 A. My lawyer has all this stuff here.
4 Q. Did you search around your office, your car,
5 wherever you keep the stuff?
6 A. I complied with what I was asked to put all the
7 documents that you asked for, I put them in the
8 boxes.
9 Q. So you did go to try to find them?
10 A. All the things that I brought up were the
11 things that you asked for me that I have.
12 Q. And you, yourself, made a search for them?

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- 13 A. The things that are in the boxes, I made a
14 search for them.
- 15 Q. Did you search to see if you have other things
16 listed in Exhibit A which are not in the boxes?
- 17 MR. HOOK: I object, he just said he
18 brought everything he had and put them in the
19 boxes.
- 20 Q. Do you have anything in those boxes which are
21 not here? In connection with paragraph 5 of
22 the exhibit, documents supporting the claim in
23 paragraph 55 that Thomas Hoffman made or caused
24 to be published false and misleading
25 statements, is there anything in those boxes

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- 1 concerning that?
- 2 A. I put everything in the boxes that was on the
3 paper that you guys submitted.
- 4 Q. So your answer is yes as to number 5?
- 5 A. My answer is all the documents I have I put in
6 the box.
- 7 Q. But in that box are there any documents
8 relating to paragraph 5 of Exhibit A?
- 9 A. I put everything in the box.
- 10 MR. HOOK: You don't have to answer
11 that question.
- 12 Q. Tell me, are there documents there in response
13 to paragraph 5 of Exhibit A? That is a
14 question you have to answer.
- 15 MR. HOOK: Objection, he doesn't have
16 to answer that question.
- 17 A. I answered it.

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18 Q. Specifically is there anything in those boxes
19 supporting and responding to paragraph 5 of
20 Exhibit A?

21 MR. HOOK: Don't answer the question.

22 MR. KATARINCIC: I take it if I asked
23 about every one of those numbers under Exhibit
24 A, I'd get the same answer, he doesn't have to
25 answer?

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1 MR. HOOK: Correct.

2 BY MR. KATARINCIC:

3 Q. Do you know whether, in those boxes that are
4 not here today, there are documents encompassed
5 by paragraphs 1, 2, 21 of Exhibit A to the
6 notice of deposition?

7 A. I put everything in that box that I had that
8 was asked of me.

9 Q. I understand.

10 A. I put all my documents in those boxes.

11 Q. I want to know whether you found any, as an
12 example --

13 A. When you go through the boxes, you can
14 determine whether they apply or not. I gave
15 all the documents I was asked to give. And my
16 lawyer handles all the ones that pertain to
17 lawyer stuff.

18 Q. As an example, paragraph 13 of Exhibit A, to
19 the extent not produced in response to our
20 request, any documents supporting, reflecting,
21 relating to or referring to the alleged mine